Crl.A. 84/2001
BEFORE
THE HON'BLE MR JUSTICE D.BISWAS
THE HON'BLE SMT. JUSTICE A. HAZARIKA

JUDGMENT AND ORDER (ORAL)

Biswas, J

By this judgment we propose to dispose of Criminal Appeal No.67/2001 and Criminal Appeal No.84 (J)/2001 as both the appeals from jail were directed against the judgment dated 6.2.2001 passed by the learned Sessions Judge, Dibrugarh, in Sessions Case No.159/2000. By the impugned judgment, the appellant Mon Gogoi @ Debananda Gogoi has been convicted under Section 302 IPC and sentenced to imprisonment for life and fine of Rs.500/-, in default, further imprisonment for one year.

2. None appeared for the appellant when the matter was taken up for hearing. We have heard Mr. K.C. Mahanta, learned Public Prosecutor.

3. An ejahar was lodged with the Officer-in-Charge of Khowang Police Station on 17.12.1997 alleging that on 16.12.1997 at about 8-30 P.M. the appellant had killed Badan Gogoi of Na-Pathar Gaon. Police after investigation submitted charge-sheet against the appellant. On commitment, the learned Sessions Judge framed charge against the appellant under Section 302 IPC and on denial of the charge proceeded with the trial. The learned Sessions Judge examined as many as 8 prosecution witnesses and after conclusion of the trial, convicted and sentenced the appellant as stated above.

4. It would appear from the evidence of Dr. R. Chaliha (PW-2) that the deceased has sustained following ante mortem injuries on his person.

Injuries: 1. An incised wound over the left side of the face extending from below the nose up to the left occipital region measuring 22 x 5 cm and cutting skin, soft tissues, muscles, vessels, nerves mandible maxilla and second cervical vertebrae.

2. An incised wound across the occipital region extending up to the right ear and cutting the upper part of the right ear measuring 20 x 3 cm and brain deep.

3. An incised wound over the right buttock measuring 6 x 3 cm situated 3 cm below the inferior angle of the scapula. Thoracic organs are healthy. Abdominal organs are healthy. Stomach was healthy and contains rice.

Cranium and spinal canal:

The injuries to the scalp, skull and vertebrae and brain are already described.

5. PW-2 also evinced that the death was instantaneous as a result of injuries sustained by the deceased. Ext-2 is the post mortem report rendered in the evidence of PW-2. The evidence of PW-2 stands established that Badan Gogoi succumbed to the injuries caused on his person as alleged by the prosecution.

6. Sri Benudhar Gogoi (PW-1) is a signatory to the inquest report. His evidence is of no help in assisting and establishing the prosecution evidence. His evidence has no significance for the prosecution except that the inquest report was prepared by police in his presence. The only statement, he made in his cross-examination is that he had seen a window of the house of the accused was broken.

Sri Hinduram Gogoi (PW-3) on being informed by his wife came back home and saw Badan lying dead in his house with cut injuries on his person. This witness has stated on oath that his wife informed him that deceased Badan Gogoi had grabbed her inside her house.

Smt. Jonali Gogoi (PW-4) stated that after hearing the outcries of her mother-in-law she went to her house and saw Badan lying dead with injuries. She also stated that her husband was also present in the house. From the evidence of this witness, we find that Badan was found lying dead with injuries inside the house of the accused and further we find that deceased entered into the house and grabbed the mother of the accused.

7. Smt. Binu Gogoi (PW-5) is the mother of the accused. Her evidence is quoted below.

The accused is my third son. I have been living in a house with my husband. The accused lives with his family in a separate house. Deceased Badan was my 'dewar' (husband's brother). He died about three years ago. At night, on the day of occurrence, I had been alone at my home. My husband had gone to attend a function with his first wife. At 10 P.M., Badan Gogoi entered my house cutting open the window and grabbing me, pointed dagger at me. When I cried out my son, the accused came, saw the occurrence through the window and entered my house through it. Then Badan rushed at the accused to attack him whereupon the latter handed the dao that he was carrying with him. Otherwise, Badan would have finished us. We came out opening the door after that and went to inform my husband and the gaonburrah.

Badan had tried to rape me twice earlier. A 'bichar' (an extra-Judicial trial) had been held over that and a fine of Rs.500/- had been imposed on him. The wife and the son of the deceased came at night and took away the torch and the dagger.

8. From the evidence of PW-5 it is clear that Badan had entered their house by cutting open the window, grabbed her and pointed a dagger towards her. She raised alarm and in response thereof the accused came and saw the occurrence through the window. The deceased then rushed towards the accused to assault him and in the process the accused had assaulted Badan with the dao. Otherwise, Badan would have killed PW-5 and her son, the accused. From his evidence in cross-examination, we find that deceased had tried to commit rape twice earlier upon her. In a 'bichar' (mel), the deceased was also fined Rs.500/. The evidence of PW-5 stands supported by the evidence of Benudhar Gogoi (PW-1), who had seen the broken window in the house of the accused as well as by the evidence of Phuleswar Gohain (PW-6). PW-6 in his evidence stated that on the night of occurrence, the accused came to his house and informed him that a thief had sneaked into his mother's room and when he went there to save his mother the deceased rushed towards him with a dagger. At that time he had thrown a dao towards the deceased. Being hit by the dao, the deceased fell down on the ground. The evidence of PW-6 further augments the defence case that the deceased had entered the house of the accused with a view to commit rape upon his mother. Sri Akali Gogoi (PW-8) corroborates the evidence of PW-6 by saying that twice earlier he was fined Rs.500/- by village 'mel' for indecent behaviour towards women.

9. From the evidence of the witnesses discussed above it stands established that the deceased had entered into the bed room of the mother of the accused in the night by breaking open a window and tried to commit rape upon her. The accused came and saw the occurrence through the broken window on being attracted by the cries of his mother. The deceased rushed towards him with a dagger and in retaliation the accused had assaulted the deceased. The factual details that emerged from the above discussion leads to the conclusion that the accused had applied force in order to save the prestige of his mother and he assaulted the deceased when he was chased by the deceased with a dagger. The conduct of the accused in our considered opinion was in exercise of his right of private defence and by no stretch of imagination it can be concluded that the accused had any intention on his part to kill the deceased and in furtherance of the intention assaulted the deceased. The prosecution also proves that the accused acted in exercise of his right of self defence. The accused had not acted beyond the limitation and in excess so as to hold him guilty under any provision of law. We are of

the opinion that the accused is thus entitled to acquittal in the instant case.

10. In the result, both the appeals are allowed and the conviction and sentence passed in Sessions Case No.159/2000 are hereby set aside and the accused thus shall be set at liberty forthwith, if not wanted in connection with any other case.